



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0470]

RIN 1625-AA00

### Safety Zone; Neuse River, Pamlico Sound, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Neuse River and Pamlico Sound near Hobucken, North Carolina. This action is necessary to provide for the safety of life on the navigable waters near Hobucken, NC, during a military exercise on December 7, 2022. This rule will prohibit all persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector North Carolina or a designated representative.

**DATES:** This rule is effective December 7, 2022, from 10 a.m. through 1 p.m.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0470 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910-772-2221, email [NCMarineevents@uscg.mil](mailto:NCMarineevents@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to ensure we establish this safety zone by December 7, 2022, in order to protect persons and vessels from the hazards associated with a military exercise. Hazards include all plausible risks associated with a live military exercise. Moreover, this rule is issued in response to a military function. Therefore, under 5 U.S.C. 553(a), no requirements in 5 U.S.C. 553 apply to it.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to protect persons and vessels from the hazards associated with this event on December 7, 2022

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector North Carolina (COTP) has determined that potential hazards associated with this event, scheduled for 10 a.m. through 1 p.m. on December 7, 2022, is a safety concern for mariners during the time that

military maneuvers occur on Pamlico Sound and portions of the Neuse River. This rule is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the exercise.

#### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone on a portion of Pamlico Sound and the Neuse River on December 7, 2022, from 10 a.m. to 1 p.m. The rule will be enforced during this time period which is when the military exercise is scheduled. The dates and times of enforcement will be broadcast locally over VHF-FM marine radio. The safety zone will include all navigable waters of Pamlico Sound and the Neuse River near Hobucken, North Carolina inside an area starting from approximate positions: latitude 35°15'17"N., longitude 076°29'40"W., then east to latitude 35°15'01"N., longitude 076°21'42"W., then south to latitude 35°00'25"N., longitude 076°24'29"W., then west to latitude 35°00'31"N., longitude 076°29'51"W., then north to the point of origin. The duration of this safety zone is intended to protect any members of the public transiting that area of Pamlico Sound and the Neuse River. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been

reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be allowed to enter or transit a portion of Pamlico Sound and the Neuse River during the exercise from 10 a.m. through 1 p.m. December 7, 2022. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the enforcement area. This rule allows vessels to request permission to pass through the regulated area with approval of the COTP.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small

Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 3 hours that will prohibit entry within an area of Pamlico Sound and the Neuse River on December 7, 2022, from 10 a.m. to 1 p.m. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

2. Add § 165.T05-0470 to read as follows:

**§ 165.T05-0470 Safety Zone; Neuse River, Pamlico Sound, NC.**

(a) *Location.* The following area is a safety zone: all waters of Pamlico Sound and the Neuse River near Hobucken, North Carolina inside an area starting from approximate positions: latitude 35°15'17"N., longitude 076°29'40"W., then east to latitude 35°15'01"N., longitude 076°21'42"W., then south to latitude 35°00'25"N., longitude 076°24'29"W., then west to latitude 35°00'31"N., longitude 076°29'51"W., then north to the point of origin.

(b) *Definitions.* As used in this section—

*Captain of the Port or COTP* means Captain of the Port Sector North Carolina.

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the COTP for the enforcement of the safety zone.

(c) *Regulations.* (1) The general regulations governing safety zones in § 165.23 apply to the area described in paragraph (a) of this section.

(2) Entry into or remaining in this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative. Unless permission to remain in the zone has been granted by the COTP or the COTP's designated representative, a vessel within this safety zone must immediately depart the zone when this section becomes effective.

(3) The COTP can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910–343–3882.

(4) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 10 a.m. through 1 p.m. on December 7, 2022.

Dated: November 21, 2022.

Matthew J. Baer,  
Captain, U. S. Coast Guard,  
Captain of the Port Sector North Carolina.

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